

Sessions case No.4 of 2024

Common Order below Application Ex.4 and Ex.5
Regarding discharge applications u/s 227 of Cr.P.C.

- 1 The present case emanates from FIR being CR.No.0472/2024 filed against the Accused namely (1) Sureshbhai Revabhai Parmar (2) Revabhai Kohyabhai Parmar (3) Brijeshbhai Sureshbhai Revabhai Parmar (4) Kankuben Kanabhai & Kohyabhai Parmar (5) Maheshbhai @ Maganbhai Revabhai Kohyabhai Parmar (6) Piyushbhai Maheshbhai @ Maganbhai Parmar allegedly having committed offences u/S 306 and 114 of the IPC..
- 2 On the basis of FIR the police has investigated the matter and the charge-sheet has been filed against the above six person u/s 306 and 114 of IPC and Criminal Case No.458 of 2023 is registered before the Judicial Magistrate, Malpur. Thereafter Ld.Magistrate has committed the said case u/s 209 of Cr.P.C. Thereafter Sessions case No.4 of 2024 is registered.
- 3 As per record, on behalf of the accused No.1 to 3, Ld. advocate Mr.H.Y.RAval has filed Vakalatnama vide Ex.2 and on behalf of the accused No.4 to 6, Ld. advocate Mr.J.D.Dave has filed Vakalatnama vide Ex.3. Moreover on behalf of the state documentary evidence List is produced vide Ex.12.
- 4 In this sessions case Ld.advocate shri H.Y.Raval has tendered an application seeking discharge u/s 227 of Code of Criminal Procedure,1973, which is exhibited as Ex.4. Moreover on behalf of the accused No.4 to 6 J.D.Dave has also filed discharge application u/s 227 of the Code of Criminal Procedure,1973, which is

exhibited as Ex.5

5 On behalf of the Accused No.1 to 3 Ld.advocate H.Y.Raval has submitted that on dt.15.08.2023, minor daughter namely Urvashi d/o Sureshbhai Revabhai Parmar, age 16 years, was being abducted and kidnapped from the lawful guardianship of the applicant-accused No.1 by the son of original complainant namely Vishal S/o Somabhai Kalabhai Parmar. It is also further submitted that on dt.16.08.2023, having come to know the above facts the applicant/accused No.1 has registered the FIR No.0443/2023 with Malpur police station, Dist.Arvalli for the offence punishable u/s 363,366 I.P.C and u/s 12 of the prevention of children (POCSO) Act.

5.1 Moreover Ld.advocate shri H.Y.Raval has submitted that on dt.18.08.2023, the applicant-accused No.1 has registered another complaint bearing Cr.No.II-0449/2023 with Malpur police station, Dist.Arvalli for the offence punishable u/s 323, 504, 506(2), 114 against the original complainant, her son and her husband. It is also further submitted that on dt.21.08.2023, the original complainant and her son namely Jigar S/o Somabhai Chamar, both had appeared to the Malpur police station, to record the statements in connection with the aforesaid offence and on that date the husband of complainant did not appeared before Malpur police station. It is also further submitted that on 24.08.2024, the original complainant had lodged an FIR being Cr.No.I-0472/2023 at Malpur police station Dist.Arvalli for the offence u/s 306 and 114 of I.P.C against the applicants

namely Sureshbahi Revabhai Parmar, Parmar Revabhai Kohyabhai Parmar and Brijeshbhai S/o Revabhai Parmar and other three person namely Kankuben W/o Kanabhai @ Kohyabhai Parmar, Maheshbhai @ Maganbhai Ravabhai Kohyabhai Parmar and Piyushbhai S/o Maheshbhai Maganbhai Parmar, alleging that they have abetted the deceased for committing suicide. In view of above facts and circumstances of the case, Ld.advocate Mr.H.Y.Raval has tendered discharge application u/s 227 of Code of Criminal procedure and he has submitted that accused No.1 to 3 are indeed innocent and they had nothing do with the alleged offence and he has also pointed out that there are no specific role(s) attributed to any of the accused. It is also further submitted that from bare reading of the averement made in the FIR and police papers, which are annexed with the charge-sheet, no offence as alleged are prima facie made out against the accused No.1 to 3. It is also further submitted that the papers of charge-sheet submitted u/s 173 (2) Cr.P.C, are taken in to consideration as it stands, then also no offence are prima facie made out against the accused No.1 to 3. It is further argued on behalf of the accused No.1 to 3 that the offence of abatement of suicide punishable u/s 306 IPC can be made out only if the ingredients as stated u/s 107 IPC are presently made out, which ingredients are absolutely missing in the present case and that point Ld.Advocate has pointed that in absence of ingredients which are necessary to make out an offence punishable u/s 306, the accused No.1 to 3 are

entitled to be discharge from the charge u/s 306 of IPC. It is also further vehemently argued that it is an admitted facts that the deceased committed suicide in his house leaving behind no suicide note or any complaint pointing figures against the accused No.1 to 3 for his (Somabhai Kalabhai Chamar) taking such a drastic step and on this point Ld.advocate Mr.H.Y.Raval has submitted that the charge for the offence u/s 306 cannot be readily presumed against the accused No.1 to 3 in absence of any direct evidence on record. It is also further submitted that looking to the contents of the FIR prosecution is failed to established prima facie case that as to when & what time the deceased committed suicide. It is also further submitted that looking to the statements of witnesses as recorded u/s 162 of Cr.P.C by the investigating agency, the statements of the witnesses are contradictory from each other, which gives rise to suspicion about the genuineness and trustworthiness of the prosecution case and Ld.advocate pointed out that there is no specific roles are mentioned at the time of recording statements of witnesses and that statements of witnesses are required to determined while deciding this discharge application. It is also further argued that looking to the contents of the complaint, it is an admitted fact that accused No.1 had already registered FIR against the original complaint her son and her husband which makes it clear that there was no good relationship between the original complainant and the accused. Therefore there is a clear cut

motive on the part of the original complainant and all the possibilities are there to involved the accused No.1 to 3 into false and frivolous charges. It is also further submitted that there is no direct evidence to make out the offence against the accused No.1 to 3 as alleged. It is also further submitted that, even if, it is believed for a while that some words are uttered by the accused to the deceased which resulted in to cause of deceased committed suicide, then also the offence u/s 306 is not made out and on this point Ld.advocate Mr.Raval has pointed out that the judgment of Rameshkumar Vs. State of Chhattisgarh and on the basis of this judgment Ld.advocate has argued that the ratio laid down in the said case is required to consider and in this case, the offence u/s 306 IPC is clearly not made out against the accused No.1 to 3. It is also further argued that the ingredients of section 306 IPC are not attracted looking to the facts and circumstance of this case and Ld.advocate has also pointed out another judgment in the case of M.Arjunan Vs. State, represented by Inspector of Police and it is also pointed out that in the said judgment it held that "the essential ingredients of the offence u/s 306 IPC are (i) the abutment (ii) the intention of accused to aid or abet the deceased to commit suicide" and this ingredients are not prima facie establishes by the prosecution. Therefore this discharge application deserves to be granted as prayed. It is also further submitted that, the complaint against the accused was filed after five

days of the death of accused and there is no evidence with respect to offence alleged u/s 306 IPC and complainant has falsely involved all the accused. Moreover Ld.advocate Mr.H.Y.RAval has submitted that in case of Amalendu Pal @ Jhantor V/s State of West Bengal, the honorable Apex court has held that mere harassment without any positive action on part of accused proximate to the time of occurrence which would not amount of an offence u/s 306 IPC. It is also further argued that the instigation can be inferred by the accused had, by his acts or omission created such circumstances that the deceased was left no option except to commit suicide and Ld.advocate has pointed out that in this case the allegation against the accused is that they harassed the deceased but there is no other material on record which indicates abatement, therefore accused deserves to discharge from the charge leveled u/s 306 IPC as alleged. It is also further argued that as per the provision of section 227 of the code that in a case triable before the court of sessions if the court on consideration of the record of the case and the documents submitted therewith and after the hearing of the prosecution and the accused, if the court consider that there no sufficient ground for proceeding against the accused discharge the accused after recording reasons for doing so and Ld.advocate Mr.H.Y.Raval has vehemently submitted that the

law on the subject is now well settled that u/s 227 and 228 of the code, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclosed the existence of all the ingredients constituting the alleged offence and while deciding the discharge application the court may for the limited purpose, shift the evidence as it cannot be expected even at that initial stage to accept all that prosecution states as gospels truth, even it is opposed to commonsense or the broad probabilities of the case and Ld.advocate has argued that while deciding this discharge application court has to consider the material with a view to find out as to there is a sufficient ground for proceeding against the accused or not and Ld.advocate Mr.H.Y.Raval has submitted that the evidences on record which categorically fails to prove the involvement of the accused No.1 to 3 in commission of the crime and that there is no prima facie evidence against the accused No.1 to 3 for framing of charges. Ld.advocate Mr.Raval has pointed out P.M.Note and submitted that cause of the death of the deceased is cardio respiratory. He further submitted that the accused No.1 to 3 deserves to be discharge from the charge leveled against them as alleged against them in the present case.

On behalf of the accused No.4 to 6

Ld.Advocate Mr.J.D.Dave has filed discharge application vide Ex.5 and he has submitted that he has pointed out that accused no.1 to 3 have also filed discharge application vide Ex.4 and all the accused are facing charge u/s 306,114 of IPC in sessions case No.4 of 2024 and he has also pointed out that there is no dispute that the original accused had registered FIR being CR.No.I-0443/2023 on 16.08.2023 against the son of original complainant of this case namely Vishal S/o Somabhai Kalabhai Chamar for the offences punishable u/s 363,366 IPC read with section 12 of the prevention of children from sexual offence act 2012. It is also further submitted that there is no dispute that on 8.08.2023, the original accused no.1 of sessions case No.04/2024 had registered complaint being CR.II-0449/2023 with Malpur police station, Dist.Arvalli for the offence punishable u/s 323,504,506(2),114 of IPC against the original complainant, the son and her husband. It is also further submitted that on dt.21.08.2023, the original complainant and her son namely Jigar s/o Somabhai Chamar both had appeared to the Malpur police station, Dist.Arvalli to record their statement in connection with the offences punishable u/s 323,504,506(2) and 114 of IPC and on the said date the husband of the original complainant of this case did not appear to the Malpur police station. It is also further submitted that on

24.08.2023, the original complainant of Sessions case No.4 of 2024 has lodged FIR being I CR.No.0472 of 2023 at Malpur police station, Dist. Arvalla for the offence u/s 306, 114 of IPC against the accused person alleging that the accused is abated to the deceased for committing suicide and in November-2023, investigating authorities has submitted charge-sheet before the court of Ld Principal Civil Judge and JMFC, Malpur which was culminated in to criminal case No.998 of 2023 at file of Ld.court below and since the offence alleged against the accused of this case was exclusively triable by Ld. sessions judge therefore Ld.Civil Judge and JMFC, Malpur has committed the said case for trial to Sessions court and sessions case No.4/2024 is registered and that sessions case is pending in this court and Ld.Advocate Mr.Dave has submitted that even if the papers of charge-sheet submitted u/s 173(2) Cr.P.C are taken in to consider as it stand., then no offence is prima facie made out against the accused No.4 to 6 and he has vehemently argued that, the offence of abatement of suicide punishable u/s 306 IPC can be made only if the ingredients as stated u/s 107 IPC are presently made out. The ingredients are absolutely missing in the present Sessions case No.4/2024. Therefore in absence of the ingredients which are necessary to make out an offence punishable u/s 306 therefore

Ld.advocate Mr.Dave has vehemently argued that looking to the statements of witnesses as recorded u/s 162 CR.P.C during the course investigation by the investigation agency there is no specific roles are attributed to any one of the accused and as per the statement of witnesses are contradictory from each other which give rise to suspicion about the genuineness and trustworthiness of the prosecution case therefor accused No.4 to 6 are entitled to be discharge from the charge u/s 306 of IPC. Moreover Ld.Advocate Mr.J.D.Dave also relied upon the various judgments of Honorable Apex court which are as under. (1) 2024 SCC Online 137 in the case of Prabhu V/s. State Rep by Inspector of Police. (2) 2002(5)SCC 371 in the case of Sanju @ Sanjay Singh Sengar V/s State of MP (3) 2010(1) SCC 707 in the case of Amalendu Pal@Jhantor V/s State of West Bengal (4) Supreme Court Cri.Appeal No. 3578/2023 in the case of Mohit Singhal & Anr. 1 State of Uttarakhand (5) SLP(crl.)No.7284/2017 in the case of Shabbir Hussain V/sState of M.P. (6) 2016 Law Suit (BOM) 1572 in the case of Dashrath Bhande V/s State of Maharashtra.

Ld.Advocate Mr.J.D.Dave has pointed out all the Honorable Apex judgments and he has forcefully argued that in this case the offence of abatement of suicide punishable u/s 306 IPC is not made out and in absence of ingredients as stated u/s 107 IPC is missing in this case

therefore all the accused are entitled to be discharge from the charge u/s 306 of IPC.

6 Per contra Ld.P.P has submitted that, there is prima facie material on record against all the accused and as per the contents of the FIR, the prosecution has established prima facie case against the accused No.1 to 6. He further submitted that the allegations against the accused are of a serious in nature, involving significant criminal conduct. The Ld.PP argues that the gravity of the offence warrants a full trial to determine the guilt or innocence of the accused. He further contended that in view of the statutory provision of presumption as provided under the evidence act, merely by saying that the accused are not involved in the crime does not become a good ground for discharge. Therefore he requested to reject both the applications Ex.4 and Ex.5.

7 I have heard Ld.advocate for the applicants and Ld.Ad.PP for the state. I have also gone through the authorities produced by the Ld.advcoates for the applicants-accused No.1 to 6. I have also gone through the contents of the applications Ex.4 and Ex.5 and contents of the FIR being I-CR.No.0443/2023 and the complaint being II-CR.No.0449/2023, which are produced on behalf of the accused on record.

8 It is settled legal position that, while considering an application for discharge, the allegations made in the first information report and the materials

collected, during the course of the investigation, are required to be considered. Truthfulness or otherwise of the allegation is not fit to be gone into at this stage as it is always a matter of trial. The Court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a *prima facie* case is made out for proceeding further then a charge has to be framed.

9 Looking to the contents of the FIR of Sessions case NO.4/2024, that the son of complainant-Shardaben namely Vishalbhai has love affairs with Urvashiben-daughter of Sureshbhai Revabhai Parmar, who lives in front of the house of the complainant. Due to which on 15/08/2023, Vishalbhai and Urvashiben ran away from their home without telling anyone. Therefore on 16.08.2023 Sureshbhai Revabhai Parmar-father of Urvashiben had filed a complaint against Vishalbhai Somabhai Chamar under sections 363,366 of I.P.C and u/s section 12 of POCSO Act.

9.1 Thereafter on 16/08/2023, all the accused came to house of the complainant and said that their daughter Urvashi has been abducted by Vishal, therefore find her and return her, otherwise you will leave the house from here and will not allow you to come to the village until their daughter is given back and if you come to the village, we will burn your house and used to torture the complainant and her family members.

Therefore the complainant namely Shardaben, her son namely Jigar and her husband namely Somabhai Kalabhai left their village and went Khanpur, Dist.Mahisagar. Thereafter on 18/08/2023, accused-Sureshbhai Revabhai Parmar filed a complaint u/s 323, 504,506(2) and 114 of the IPC against the complainant, her husband and her son. Thereafter both the complainant and her son appeared at Malpur police station on 21/08/2023 and the police asked about her husband Somabhai, therefore Shardaben said I don't know about him and her husband doesn't even have a phone. Then the complainant and her son Jigar, went to their maternal uncle's home at Khadoda and stayed there. Thereafter while they were going towards village Mevda, she knew that her husband Somabhai has committed suicide by strangulation inside her house. Looking to the contents of the FIR, facts come on record that Vishalbahi has love affairs with Urvashiben. On 15.08.2023 they ran away from their home without telling anyone. Thereafter on 16.08.2023 accused-Sureshbhai Revabhai Parmar-father of Urvashiben had filed a complaint against Vishalbhai Somabhai Chamar under sections 363,366 of I.P.C and u/s section 12 of POCSO Act. Thereafter on 18/08/2023, Sureshbhai Revabhai Parmar filed a complaint u/s 323, 504,506(2) and 114 of the IPC against the complainant, her husband and her son.

- 9.3 In the present case there is direct allegation in the FIR itself that Urvashi has been abducted by Vishal the son of complainant, therefore the accused said that find her and return her, otherwise you will

leave the house from here and will not allow you to come to the village until their daughter is given back and if you come to the village, we will burn your house and used to torture the complainant and her family therefore her husband Somabhai has committed suicide by strangulation inside his house. Therefore, when there are direct allegation against the accused, the involvement of the present applicants can be construed only after taking of the evidence. Therefore looking to all the above circumstances, it is clear that the present accused are prima facie involved in the offence and whether the allegations are true or not is a matter of trial.

- 10** Moreover looking to the statements of Rameshbhai Dhulabhai, Jayantibhai Gobarbhai dt.25.08.2023, there is prima facie case against the present accused No.1 to 6 that all the accused has threatened to the complainant and her family members to leave their village and if the complainant and her family member will not leave village, the accused will file false cases against the complainant and her family members and they have also threaten to the complaint and her family members that they will burn their house, break their leg and hands, in presence of these two witnesses Rameshbhai Dhulabhai, Jayantibhai Gobarbhai all the accused were pressurized and tortured due to love affairs of Vishalbai and Urvashiben and due to all these harassment complainant and her family member left the village on dt.16.08.2023, thereafter another complaint is filed by Sureshbhai Revabhai Parmar with the Malpur police station, CR.No.II

449/2023 under section 323,504,506(2),114 of the IPC and in the said complaint incident dt.16.08.2023 is mentioned and the said complaint is not filed on 16.08.2023 by Sureshbhai Revabhai Parmar against the family members of the complainant. According to the police papers the complainant, her husband and her son namely Jigarbhai have left the village Mevada, Tal.Malpur. According to the statement of one Ratanben w/o Vechatbhai Kodarbhai, that on 23.08.2023 round about 5:30 p.m she was at her residence and on next day she show that house of Somabhai Kalabhai Chamar is closed and from the house of Somabhai Kalabhai Chamar there is bad smell was coming out and their house was closed therefore the witness informed the Sarpanch shri galabhai Chandubhai and thereafter Malpur police came and executive magistrate came at the house of Kalabhai Galabhai Chamar and door was opened and Somabhai Kalabhai Chamar was inside of the house and said Somabhai committed suicide by strangulation inside his house. Therefore looking to the statements of the independent witnesses namely Jayantibhai Gobarbhai and Rameshbhai Dhulabhai, deceased and their family members were tortured by the accused No.1 to 6 of Sessions case No.4/2024 and looking to the material on record, P.M.Report and looking to the facts and circumstances of the case there is a prima facie case that the accused No.1 to 6 are involved in the alleged offence punishable u/s 306,114 of IPC. Hence in view of the aforesaid facts and circumstances, the judgment relied upon by the Ld.advocates for applicants/accused No.1 to 6 are not

helpful to them, therefore, as per above said discussion the applications Ex.4 and Ex.5 deserves to be dismissed and pass the following order.

O R D E R

- 1 Present applications Ex.4 and Ex.5 are hereby rejected.

Order Signed and Pronounced in the open Court today.

DATE: 9/07/2024

PLACE: MODASA

MMK

(Mrs.Asha Nileshkumar Anjaria)

Sessions Judge
Arvalli at Modasa
CODE NO.GJ00348
